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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
AirTouch Paging)
Petition For Limited)
Waiver of Per-Call)
Payment Obligations To)
Payphone Service Providers)

CC Docket No. 96-128

INITIAL COMMENTS OF
VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), acting in accordance with the Commission's Public Notice, DA-97-2735, released December 31, 1997, hereby files its comments concerning the captioned waiver petition.

I. Introduction

Vanguard, through its operating subsidiaries, resells one-way paging services in many of the 29 MSAs and RSAs where it also provides cellular telephone services. Vanguard currently has tens of thousands of paging customers. In addition, Vanguard has only recently entered into an agreement, subject to obtaining the requisite FCC approvals, to acquire a facilities-based paging provider with over 50,000 direct subscribers. As a paging provider directly or indirectly using toll-free services (e.g., 800 numbers), Vanguard is exposed to the same potential costs which are the focus of the AirTouch Paging ("AirTouch") petition. Therefore, Vanguard has a direct interest in the outcome of this matter.

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List A B C D E

II. AirTouch Has Met The Commission's Waiver Standard

Under the Commission's Rules, a waiver is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Co., L.P. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). There must be a sound explanation why deviation from the norm better serves the public interest and the nature of the special circumstances. *Id.*; see *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). This standard has been met by AirTouch in this case.

The Commission's per-call compensation system for payphone service providers ultimately was to be based on "competitive market conditions". Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Report and Order), FCC Rcd. 20,541, 20,547 (para. 49) (1996) ("Payphone Order"). A key element of this system was the option of those carriers that did not want the obligation to pay excessive compensation to selectively block calls originating from payphones. *Id.*, 11 FCC Rcd at 20,550 (para. 17). In theory, this blocking option would contribute to a negotiated, market-based compensation rate.

The Commission made the provision of payphone-specific coding digits a prerequisite to payphone per-call compensation payments by carriers for subscriber 800 and access code calls. See *id.*, 11 FCC Rcd. at 20,591 (para. 98-99). In part, the Commission did so to facilitate the blocking option. Without that option, the Commission has conceded that the "market is not yet free of impediments that interfere with a competitive negotiated process." Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Order on Remand), FCC 97-371, released October 9, 1997, at p.54 (para. 122, n. 325).

However, the Commission has now, on its own motion, waived, at least temporarily, the payphone-specific coding digit requirements that are essential to accurately track payphone-originated calls. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order, DA 97-2162, released October 7, 1997. For a great many payphones, this action has the effect of undermining the option to selectively block that the Commission originally granted. As AirTouch points out, there are no genuine practical alternatives to selective blocking through use of payphone-specific coding digits. Thus, the Commission's action has the effect of tilting the marketplace in the opposite direction. Carriers and 800 number subscribers are now exposed to pay compensation without the ability to selectively block. Such a result runs directly counter to the goal of the entire per-call compensation mechanism (i.e., a competitive marketplace solution). Until such time as that mechanism is in

place, AirTouch has set forth special circumstances that justify a limited waiver.

Furthermore, AirTouch is correct when it raises the question of exposure to "unlimited financial exposure" due to calls from payphones. There are already trade press reports of potential use of various techniques to run up the number of compensable calls from payphones. "Paging Fears Pay Phone Fraud", Wireless Week, December 15, 1997, at pp. 1, 8; "800-Number Charges Make Operators Fume", Wireless Week, December 8, 1997, at pp. 1, 4; "Groups protest FCC's new pay-phone plan," RCR, December 8, 1997, at pp. 1,8. It is not in the public interest for AirTouch, or any similarly-situated company, to be exposed to potential fraud without the ability to selectively block such calls.

The Commission's waiver of its previously-mandated payphone-specific coding digits, which the Commission concedes was a prerequisite for the receipt of per-call compensation, has put AirTouch and other similarly-situated companies in an untenable position. Each has the theoretical option to selectively block such calls, but the Commission's own waiver action has made it a practical impossibility.

The Commission should grant the AirTouch limited waiver request. The special circumstances, including those of the Commission's own making, justify such grant. Moreover, the public interest is served by protecting against unlimited financial exposure until the market-based system envisioned by the Commission is in place.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.

By: Richard C. Rowleson

Richard C. Rowleson
Executive Vice President and
General Counsel
2002 Pisgah Church Road
Greensboro, North Carolina 27455
(336) 545-2223

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